Supreme Court, U.S.
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No. 00-0173

IN THE

Supreme Court of the United States

STANLEY LaFLAMME,

Petitioner,

v.

ESSEX JUNCTION SCHOOL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF VERMONT

RESPONDENT'S BRIEF IN OPPOSITION

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Statement of the Case.

The Vermont Supreme Court's Decision (the "Decision") provides the essential facts of this matter. Petitioner's Appendix ("App.") 19. To summarize, in May 1994, Petitioner was elected to the Village of Essex Junction Prudential Committee (the "Committee"), which functions as the Village's school board, and took office in July, 1994. App. 20. Petitioner's fellow Committee members found that he failed to perform his Committee responsibilities, and interfered with the orderly conduct of Committee business. App. 20, 22 and 23. He failed to attend many Committee meetings and left many others early. App. 22. Other members felt he was misrepresenting the Committee's position on formation of a union high school with the Town of Essex. App. 20.

The other members attempted to discuss Petitioner's performance with him, but he refused. App. 20 and 24. Out of frustration with his performance and behavior, the Committee Chair sought the advices of the executive director of the Vermont School Board Association, App. 20, who advised the Chair that as a last resort the Committee could censure Petitioner. App. 20-21. The Committee also contacted its own attorney about an appropriate response to Petitioner, and finally, how to censure him. App. 21.

On May 30, 1995, the Committee convened a meeting which Petitioner chose not to attend, at which the other members discussed preparing a motion to censure Petitioner (the "Censure Motion") App. 21. In executive session on

June 12, 1995, the other members asked Petitioner to discuss their concerns regarding his performance. App. 21-23. Had Petitioner been willing to discuss those concerns, there would have been no censure. App. 24. As it was, Petitioner refused to discuss the subject, and told the other members that whatever they had to say should be said in public. App. 24. The Censure Motion was then presented in open session, Petitioner spoke in his own defense and the Committee proceeded to pass the motion. App. 24.

The case was tried to a jury on three counts: (i) failure to accommodate handicap (9 V.S.A. § 4502); (ii) free speech violation (42 U.S.C. § 1983) (the "Free Speech Claim"); and (iii) procedural due process violation (42 U.S.C. § 1983) (the "Due Process/Association Claim"). App. 24. A fourth count for defamation was voluntarily dismissed during trial. App. 24. The jury found for Respondent on Counts One and Two and for Petitioner on Count Three, awarding him $75,000 of compensatory and $25,000 of punitive damages. App. 25. Respondent appealed the judgment on the Due Process/Association Claim.[1] Among other issues, Respondent argued that it was entitled to judgment as a matter of law because Petitioner failed to prove that he had been deprived without due process of his right to freedom of association or of any other constitutionally protected right. The Vermont Court agreed and reversed. App. 19.

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1. Initially, Petitioner cross-appealed to the Vermont Court, but he did not brief the cross-appeal and dropped it at oral argument. Thus the only claim before the Vermont Court, was Respondent's appeal of the Due Process/Association claim.

Petitioner now seeks review of the Decision on Petition for a Writ of Certiorari, but the Due Process/Association Claim which was decided by the Vermont Court is not the claim on which he seeks review.

A. Supreme Court Rule 15.2 Misstatements of Fact.

Although Petitioner's Statement of the Case is more argumentative than factual, he does make two material misstatements of fact.

1. "The Defendant issued an official governmental censure without due process in retaliation for petitioner's speaking out on public issues . . ." Petition 12.

As set forth in the Decision, the Censure Motion identified six specific violations of the Committee's Code of Ethics, district policy and standards of good boardsmanship. App. 21-23. Only one of those reasons was related to Petitioners' comments at the June 12, 1995 open meeting regarding Committee matters. The censure was the culmination of numerous well-founded and oft-articulated reasons about which the Committee Chair testified.[2] Trial Transcript 9/4/97 at 161.

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2. Trial Testimony of Committee Chair Leslie Mooney:

> Q. Some suggestion and questions by counsel that it was the performance of Mr. LaFlamme at the May 23 Trustees' meeting that resulted in the censure?

(cont'd)

2. "At trial, the Defendant made no objection to the substance of the trial court's instructions to the jury on due process." Petition 10.

Thoughout the trial Respondent objected to the substance and propriety of the Due Process/Association Claim and the jury instruction.[3] At the close of the evidence, Respondent

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(cont'd)

> A. No. That was the last straw as far as I was concerned.
>
> Q. Many other items you weren't -- you weren't able to hear the testimony of the others, but -- so, we won't go into it, but there were many other factors that went into your consideration?
>
> A. Many Others.

3. At the first opportunity, Respondent objected to evidence that was not relevant to Petitioner's claims plead in the Complaint.

> Mr. PIERSON: May it please the Court, I understood the defamation -- defamation claim had been dropped as a claim so we object to this line of inquiry.
>
> MR. HOBSON: That's true, defamation has been dropped, but the issues relevant to the 1993 claim. (sic)
>
> MR. PIERSON: We deny that.
>
> THE COURT: At this point I don't know what is relevant to the 1993 claim. (sic) I'm not sure I have
>
> (cont'd)

(cont'd)

what the elements are down so were going to allow it at this point and if later we discover that it's not relevant to the claim, we'll ask the jury to disregard it.

Transcript, 9/2/97 at 132.

At the close of Appellee's case-in-chief, Appellant moved for Judgement as a matter of law, on a number of claims, and the court introduced due process for the first time in the case.

THE COURT: Now I was also thinking of charging on the due process claim. In other words, the deprivation of -- the absence of due process in the handling of the -- of the hearing.

MR. HIGGINS: That --

THE COURT: -- that the censure was ultimately issued.

MR. HIGGINS: Well, I would make two points with respect to due process. First, we don't believe there's a due process claim asserted under the complaint.

Second, Mr. LaFlamme hasn't asserted a -- a right that has been deprived him for which he is entitled to due process. He has -- he is not an employee of the School District and is not entitled to notice and hearing of a termination or anything of that sort.

* * *

THE COURT: And whether or not his Complaint -- let's just see what he has in his Complaint. Well, I don't know, paragraph 20 –

(cont'd)

moved for judgment as a matter of law on this claim on the grounds that there was no proof that Petitioner had been deprived of a federally protected right.

Respondent also objected to the jury instruction on the ground that the Due Process/Association claim was not pled or otherwise properly raised both before and after the charge was given to the jury.

Following the trial, Respondent moved for judgment as a matter of law and objected to the Due Process/Association Claim on the same basis raised at trial, as not properly pled, proven or charged to the jury.

The issues of whether Petitioner pled or proved a Due Process/Assocation Claim, and whether the trial court properly instructed the jury on such a claim was properly before the Vermont Court.

(cont'd)

> MR. HIGGINS: Well, Your Honor, it's -- I'm sorry. This is -- there is no -- due process doesn't prefect -- protect Mr. Laflamme for state created rights. It only protects him, it only applies to federal protections and so he doesn't have any due process rights under the state statutes. I mean, that's -- that's a given that I can provide lots of Supreme Court (unclear), that I can provide a lot of Supreme Court

Transcript, 9/3/97 at pp.183-185.

II. Summary.

The question presented by Petitioner is not the claim that was resolved by the Vermont Court. That claim concerned a due process violation injuring Petitioner's reputation and a corresponding impingement of his right to freedom of association. That is categorically different from the issue for which Petitioner now seeks review: Violation of his right to free speech without due process of law. The Court's decision in *Adams v. Robertson*, 520 U.S. 83 (1997), precludes consideration by the Court of an issue not properly presented to or addressed by the Vermont Court. Since the issue presented in the petition was not properly presented to or addressed by the Vermont Court, the Petition for Writ of Certiorari should be denied.

The Vermont Court's brief (one paragraph) discussion of the relationship between Petitioner's failed Free Speech Claim and his Due Process/Association Claim does not cure the deficiency in the Petition because the jury determined that there had been no free speech violation. In addition to the absence of a free speech violation, the Vermont Court found that there has been no other deprivation of a federally protected right. The Decision correctly determined that Respondent is entitled to judgment as a matter of law.

III. The Petition Does Not Present An Issue Addressed By The Vermont Court.

This Court should deny the Petition because it does not present an issue addressed to, or decided by, the Vermont Court. Petitioner cannot seek review of an issue presented for the first time in his Petition. Such review is barred by *Adams v. Robertson*, 520 U.S. 83 (1997), wherein this Court

explained the applicable limitations of its review of state-court judgments.

> With "very rare exceptions," we have adhered to the rule in reviewing state-court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by or properly presented to the state court that rendered the decision we have been asked to review.

Id. at 86 (citations omitted). This rule is either jurisdictional or prudential. *Yee v. Escondido*, 503 U.S. 519, 533 (1992). Under either construction, the Court should decline to review the Decision.

Although it is difficult to discern Petitioner's precise argument, clearly he seeks revew of a federal claim which was neither presented to, nor addressed by, the Vermont Court. Based upon the Question Presented, however, it reads like his discredited Free Speech Claims. Petitioner requests this Court to determine:

> May a government body, without due process of law, intentionally and officially censure an elected member in retaliation for expressing his views at a public meeting?

Petitioner's Free Speech Claim was submitted to and rejected by the jury, with judgment entered for Respondent. That judgment was at first cross-appealed, but later dropped by Petitioner. Thus, this issue was not presented to the Vermont Court.

According to the Vermont Court, the issue it decided was whether there was sufficient evidence to support Petitioner's Due Process/Association Claim:

> In essence, the claim upon which the verdict was rendered, as evidenced by the jury instructions, was that the Prudential Committee damaged LaFlamme's reputation so severely "that his opportunity and ability to associate with others were significantly limited and that the damage resulted without due process of law." Defendants appeal on the ground that they were entitled to judgment as a matter of law.

App. 25. The Petitioner does not address the Due Process/Association Claim.

Petitioner argued that his failed Free Speech Claim provided the missing support for his Due Process/Association Claim, but the Vermont Court disagreed for the simple reason that the jury determined that Respondent had not violated Petitioner's right of free speech. App. 30. Where the deprivation required to support a due process claim is claimed to be a free speech violation, the absence of a violation is dispositive. *See Board of Regents v. Roth*, 408 U.S. 564, 575 (1972). Further, even if Petitioner had succeeded on his Free Speech Claim, his Due Process/ Association Claim would nevertheless still fail because he was not deprived of any other protected property or liberty interest. App. 29-34.

IV. Petitioner Has Not Asserted That He Has Been Deprived of a Federally Protected Property Right or Liberty Interest.

The Due Process/Association Claim on which the jury returned a verdict for Petitioner was based upon a supposed deprivation of his liberty interest in his reputation and right to free association:

> The plaintiff's third claim is that the defendant violated his Constitutional rights by depriving him of liberty without due process law.
>
> To prove this claim, the plaintiff must again show that number one, the defendant acted under color of state law, as explained earlier. Number two, that the defendant's conduct deprived plaintiff of his liberty without due process of law.
>
> Generally, one's reputation is not considered to be a property interest or a liberty interest deserving of due process protections. **However, if the defendant acts so as to injure plaintiff's reputation and the damage is so severe as to seriously limit plaintiff's opportunity and ability to associate with others, there may be a deprivation of the plaintiff's liberty.** In those instances, the plaintiff is entitled to due process of law.

App. 48. (emphasis added).

Unlike the claim submitted to the jury, Petitioner asserts here, as he did before the Vermont Court, that he has a

protected property or liberty interest in his office, in occupying and exercising his membership on the Committee and in running for future elected offices. Petition 5. As an elected official, **and not as an employee of the School District**, Petitioner has no federally protected interest in his membership on the Committee. *Snowden v. Hughes*, 321 U.S. 1 (1944), *rehg. denied* 321 U.S. 804 (1944). The Court has stated unequivocally:

> More than forty years ago this Court determined that an unlawful denial by State action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. *Taylor and Marshall v. Bekum*, 178 U.S. 548, 20 S.Ct. 1009. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave v. State of Missouri ex rel. Newell*, 246 U.S. 650, 38 S.Ct. 334 as we reaffirm it now.

Snowden v. Hughes, 321 U.S. at p. 7 (emphasis added).

Therefore, Petitioner has no federally protected interest in his position, or in the performance of his duties, on the Committee. Petitioner cites several cases in support of his contention. But each case deals with an entirely different interest than that claimed by Petitioner, and each arises out of completely different circumstances. *See e.g. Board of Regents v. Roth*, 408 U.S. 564 (1972) (**Employee** untenured university professor had no liberty or property interest in continued employment absent charges against him resulting in stigma or inability to gain future employment); *Duckworth v. Ford*, 995 F.2d 858 (8th Cir. 1993) (defendant not entitled

to qualified immunity for retaliation against public **employee** for support of his competitor for a promotion); *Hyland v. Wonder*, 972 F.2d 1129 (9th Cir. 1989) (Hyland I) *cert. denied*, 508 U.S. 908 (1993) (Terminated government youth center **employee** and volunteer had protected property interest in his position); *Smart v. Board of Trustees*, 34 F.3d 432 (7th Cir. 1994) (Opining that defamation lawsuit could be an infringement on freedom of speech in decision denying a preliminary injunction against a university funding suit against unsuccessful applicant for employment that waged publicity campaign against university employees for failure to hire him.); *Little v. City of North Miami*, 805 F.2d 962 (11th Cir. 1986) (**business reputation** and goodwill are a protected interests); *Anderson v. McCotter*, 100 F.3d 723 (10th Cir. 1996) (restrictions on free speech is permissible where necessary to prevent the disruption of governmental functions); *Elrod v. Burns*, 427 U.S. 347 (1976) (loss of public **employment** due to political affiliation violates First and Fourteenth Amendments).

Petitioner does not explain how these cases support his Petition. Nothing in these cases, however, identifies a protected interest of which he claims to have been deprived. Absent a recognized protected interest, the Decision of the Vermont Court reversing the judgment on the Due Process/Association Claim is correct, and should not be subject to review.

V. Conclusion.

Petitioner has not sought review of the Due Process/ Association Claim decided by the Vermont Court. He has failed to identify either in the record or in the applicable law a federally protected right of which he has been deprived. Accordingly, for all the reasons set forth in this Brief, the Petition should be denied.

Respectfully submitted,

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